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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 06780050AA	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____ HAND DELIVERY		Application Number 10/757,577	Filed January 15, 2004
		First Named Inventor Norman DeCOST	
		Art Unit 2618	Examiner NGUYEN, Tu X.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		John S. Hilten, Esq.	
<input checked="" type="checkbox"/> attorney or agent of record. 52,518		Typed or printed name	
Registration number _____		703.712.5069	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.		Telephone number	
Registration number if acting under 37 CFR 1.34 _____		June 5, 2006	
		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Norman DECOST, *et al.*
Application Serial No.: 10/757,577
Attorney Docket No. 06780050AA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Docket No.: 06780050AA

Norman DECOST, *et al.*

Confirmation No.: 4545

Serial No.: 10/757,577

Group Art Unit: 2618

Filed: January 15, 2004

Examiner: NGUYEN, Tu X.

For: PASSIVE DISPLAY UNIT AND SYSTEM AND METHOD OF USE

USPTO Customer Service Window, ATTN: Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the **Final Office Action** mailed January 3, 2006 ("Office Action"), Applicants respectfully request that a panel of Examiners (including the examiner of record) consider the merits of each ground of rejection for which appeal has been requested and issue a written decision as to the status of the application.

- **Remarks** begin at page 2.
- **Conclusions** are set forth at page 5.

Applicants believe that no extensions of time are required at this time, but if extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to **Deposit Account No. 23-1951** (McGuireWoods). Please charge any deficiencies in fees and credit any overpayment of fees to the same Deposit Account.

REMARKS

Applicants feel the rejections of record are clearly not proper and are without basis. The rejections are based upon a clear legal or factual deficiency.

35 U.S.C. § 102 Rejection

Claims 1-4, 8, 10-17, 20-23, 27, 30-33, 37-40, 44, 45, and 47-63 are rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent Application No. 2001/0028301 to Geiger, *et al.* This rejection is not proper.

A claim may be properly rejected under 35 U.S.C. § 102(b) if, and only if, a single prior art reference discloses each and every feature of the invention as recited in the claim. If the rejected claim recites even one feature that is not disclosed by the prior art reference, the 35 U.S.C. § 102(b) rejection is improper and must be withdrawn. In this case, the rejection of claims 1-4, 8, 10-23, 27, 30-33, 37-40, 44, 45, and 47-63 must be withdrawn because Geiger, *et al.* fails to disclose at least one feature recited in each of independent base claims 1, 21, 38, 39, and 45.

Claim 1 recites, *inter alia*, a passive, mobile display unit having a display screen that displays the information without user interaction ... wherein said passive display unit is **void of user inputs**; Claim 21 recites, *inter alia*, a passive, mobile display unit that receives the information stored in said transceiver, at any location within the retail environment, and **displays the information on a display screen without user interaction** ... wherein the display unit is configured to **randomly display regardless of a location** of the device within the retail environment. Claim 38 recites, *inter alia*, a passive, mobile display unit that receives the information from said transceiver, and displays the information on a display screen **without user interaction** ... wherein the display unit is configured to **randomly display regardless of a location of the device within the retail environment**; Claim 39 recites, *inter alia*, automatically displaying the information on a display screen of the at least one passive display unit ... wherein said step of automatically displaying comprises **automatically randomly displaying regardless of a location** of the display unit within the retail environment. and Claim 45 recites, *inter alia*, automatically displaying the information on a display screen of the at least one passive display unit ... wherein said step of **automatically displaying comprises automatically randomly displaying regardless of a location** of the display unit within the retail environment.

Geiger, *et al.*, on the other hand, is directed to a complex interactive shopping cart display system. In particular, Geiger, *et al.* includes a display unit on a shopping cart, a plurality of store-wide trigger or transceiver units. See paragraph [0008]. These store-wide trigger units create an entire complex interactive advertising and promotion system. For example, the plurality of trigger units are mounted throughout the store at the point of product display to advertise or promote a desired product. The transceiver unit automatically sends a message to the display unit, which causes the product-specific promotion to appear on the screen and a soft audible chime to alert the shopper of the approaching promoted product. See paragraph [0009]. Moreover, the central display screen includes a minimum of two thumb controls for selecting directories and scrolling lists, which are displayed on the display screen. See column [0013] and buttons 30 shown Figures 1 and 5 for example only.

Geiger, et al. fails to anticipate at least the claim 1 feature of “wherein said passive display unit is void of user inputs”

On the contrary, the invention is directed to a more user friendly and user accepted passive display device. As set forth by claim 1, the invention is directed to a *passive, mobile display unit having a display screen that displays without user interaction and wherein said passive display unit is void of user inputs*. This “passive, mobile” device operates “without user interaction,” which is in stark contrast to the plurality buttons (30 of Figures 1, 2, and 5) and the plurality of transmitters 140A, 140B, 140C, 140D of the Geiger, *et al.* device. Moreover, claim 1 requires that the passive display unit is void of user inputs. The Geiger, *et al.* includes a plurality buttons (30 of Figures 1, 2, and 5) and in no way teaches an implementation that is void of buttons.

Because the applied reference of Geiger, *et al.* fails to disclose each and every element recited in claim 1, the Panel is respectfully requested to withdraw the rejection under 35 U.S.C. § 102.

Geiger, et al. fails to anticipate at least the claim 21 and 38 feature of “without user interaction”

Similarly, independent claims 21 and 39 recite that the device is passive and information is displayed without user interaction. In particular, claim 21 recites, *inter alia*, a passive, mobile display unit that receives the information stored in said transceiver, at any location within the retail environment, and displays the information on a display screen **without user interaction** ... wherein the display unit is configured to randomly display regardless of a location of the device within the retail environment. Claim 38 recites, *inter alia*, a passive, mobile display unit

that receives the information from said transceiver, and displays the information on a display screen **without user interaction** ... wherein the display unit is configured to randomly display regardless of a location of the device within the retail environment.

As noted above, Geiger *et al.* includes a plurality of buttons for use interaction. Accordingly, Geiger *et al.* does not anticipate claims 21 and 28.

**Geiger, *et al.* fails to anticipate at least the claim 21, 38, 39, and 45 feature of
“randomly displaying regardless of a location”**

Independent claims 21, 38, 39, and 45 recite that the device is passive and information is displayed randomly regardless of location. In particular, claim 21 recites, *inter alia*, a passive, mobile display unit that receives the information stored in said transceiver, at any location within the retail environment, and displays the information on a display screen without user interaction ... wherein the display unit is configured to randomly display regardless of a location of the device within the retail environment; Claim 38 recites, *inter alia*, a passive, mobile display unit that receives the information from said transceiver, and displays the information on a display screen without user interaction ... wherein the display unit is configured to randomly display regardless of a location of the device within the retail environment; Claim 39 recites, *inter alia*, automatically displaying the information on a display screen of the at least one passive display unit ... wherein said step of automatically displaying comprises automatically randomly displaying regardless of a location of the display unit within the retail environment; and Claim 45 recites, *inter alia*, automatically displaying the information on a display screen of the at least one passive display unit ... wherein said step of automatically displaying comprises automatically randomly displaying regardless of a location of the display unit within the retail environment.

The invention operates to randomly display information regardless of the location of the device within a retail environment. Contrary to the invention, the Geiger, *et al.* device has a plurality of transmitters 140A, 140B, 140C, 140D that act as store-wide trigger units to create an entire complex **non-random** interactive advertising and promotion system. Accordingly, the Geiger, *et al.* device operates based on the location is not random.

Accordingly, Applicants submit that Geiger, *et al.* does disclose each and every feature of the invention as set forth by claims 1, 21, 38, 39, and 45. Accordingly, Applicants respectfully request that the rejection over claims 1-4, 8, 10-23, 27, 30-33, 37-40, 44, 45, and 47-63 be withdrawn.

**Geiger, et al. fails to anticipate claim 27 under 35 U.S.C. § 102 because it depends
from Claim 24 that is rejected under 35 U.S.C. § 103**


The Examiner has rejected claim 27 under 35 U.S.C. § 102 over Geiger, et al. However, claim 27 depends from claim 24. The Examiner has rejected claim 24 under 35 U.S.C. § 103 over Geiger, et al. in view of Simionescu. This is not a proper rejection.

CONCLUSIONS

Applicants submit that the pending Office Action is not proper. Accordingly, Applicants respectfully submit that all pending claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is thus respectfully requested to pass the above application to issue.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicants' undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested. Applicants respectfully request that a timely Notice of Allowance be issued for this application.

Respectfully Submitted,



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